

**REPORT - PLANNING COMMISSION MEETING**  
**August 28, 2003**

**Project Name and Number:** A Perfect Day (PLN2003-00316)

**Applicant:** Tom Schriener, A Perfect Day, Inc.

**Proposal:** To consider an application for a Conditional Use Permit for a massage therapy and massage training establishment.

**Recommended Action:** Approve, based on Findings and subject to Conditions.

**Location:** 39039 Paseo Padre Parkway.

**Assessor Parcel Number(s):** 501-1130-054-00.

**Area:** Lot size: 63,161 square feet, Building size: 17,390 square feet.

**Owner:** Ramesh C & Shakira Karipineni

**Consultant(s):** Rene Brochier, Real Estate Agent; Colliers International  
Ravi Nalluri, Architect; Archestrates  
Jade Li, Manager Assistant, A Perfect Day, LLC  
Tailiang Li, School Manager, Minjian Hand Healing Institute

**Environmental Review:** This project is exempt from the California Environmental Quality Act (CEQA) per section 15301, Existing Facilities.

**Existing General Plan:** CBD, Central Business District

**Existing Zoning:** C-B-D, Central Business District

**Existing Land Use:** Existing two-story commercial office building with medical, real estate and travel agency offices.

**Public Hearing Notice:** Public hearing notification is applicable. A total of 186 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Capitol Avenue, Hastings Street, Liberty Street, Mowry Avenue, and Paseo Padre Parkway. The notices to owners and occupants were mailed on August 15, 2003. A Public Hearing Notice was delivered to The Argus on August 11, 2003, to be published by August 14, 2003.

**Background and Previous Actions:** The site is located at the southwest intersection of Paseo Padre Parkway and Capitol Avenue. The site was originally approved in 1971 for a financial office building with a drive-up window for Palo Alto Savings and Loan (U-70-52.) From 1982 to 2002, First Lady Spa, a health and fitness facility, occupied the 10,224 square foot first floor tenant space. Building Permits have been issued recently to remove the swimming pool and spa (BLD2003-03407) and seismically retrofit the first floor tenant space (BLD2003-07547.)

**Project Description:** The applicant is requesting approval for a Conditional Use Permit for a massage therapy and massage training establishment. The proposed use as a massage establishment, A Perfect Day, LLC, will occupy 6,750 square feet of the first floor tenant space. The types of massage services proposed are acupressure, therapeutic massage, sport massage, foot massage, aromatherapy, Chinese herbal treatment, Qigong (a form of self-healing art combining movement and meditation,) and other like treatments. The massage use will be conditioned so that anyone performing massages will be required to procure the necessary license(s) from the City before beginning work. (Exhibit "B", Condition # B-2) The applicant has indicated that the hours of operation for the business will be from 9 A.M. to 10 P.M. The business will have a total of 30 employees.

The massage training establishment, Minjian Hand Healing Institute, will occupy 1,000 square feet of the first floor tenant space adjacent to the massage establishment. The massage training establishment will employ two instructors and the class size is proposed to be no more than five students per session. The massage training use will be conditioned so that students will not be permitted to administer massages to the public. (Exhibit "C", Condition # C-5) The applicant has indicated that the hours of operation for the training use will be from 9 A.M. to 9 P.M.

The massage establishment and massage training establishment will share the main entrance from the parking lot and an entrance from Paseo Padre Parkway. Students will only be permitted to receive training and practice administering massages in the area specifically designated for massage training. (Exhibit "C", Condition # C-6) Any revisions to the floor plan or entrance shall be conditioned to be reviewed by the Development and Environmental Services Director and the City License Authority. (Exhibit "C", Condition # D-2)

### **Project Analysis:**

**General Plan Conformance:** The existing General Plan Land Use designation for the project site is CBD, Central Business District. The proposed project is consistent with the existing General Plan Land Use designation for the project site because the General Plan allows massage establishments and massage training establishments within the Central Business District Land Use designation. The following General Plan Goals, Objectives, and Policies are applicable to the proposed project:

- **Fundamental Goal F-8:** A Diversity of Residential, Recreational, Cultural, Employment, and Shopping Opportunities. *Analysis: The massage establishment and massage training establishment provides diverse recreational, cultural and employment opportunities.*
- **Land Use Goal LU 2:** Commercial development focused in well-defined commercial areas.
- **Land Use Policy LU 2.4:** All service uses are allowed in the CBD.

**Zoning Regulations:** The project site currently has a zoning designation of C-B-D, Central Business District. The massage establishment use is a conditionally permitted use within the Central Business District. The Fremont Municipal Code (FMC) recognizes that "massage" is a viable professional field offering the public valuable health and therapeutic services [FMC Section 4-7100(a)]. The use, as proposed and conforming to the recommended conditions of approval, would be in compliance with Ordinance No. 2472, Massage Establishments, adopted by the City Council on July 2, 2002 (FMC Section 8-22148.05.)

The massage training establishment, categorized as a vocational training or school service, is a conditionally permitted use within the Central Business District. The massage training establishment is required to obtain a license from the California State Bureau for Private Postsecondary Vocational Education. The applicant has filed an application with the State Bureau. Additionally, the use, as proposed and conforming to the recommended conditions of approval, would be in compliance with Ordinance No. 2472, Massage Establishments, adopted by the City Council on July 2, 2002 (FMC Section 8-22148.05.)

**Parking:** The existing commercial office building provides 74 on-site parking spaces for the use of all tenants, including 2 handicapped and 2 van accessible spaces. The applicant is not proposing to add any floor area to the tenant space. The 6,750 square foot tenant space for the massage establishment will require 23 parking spaces per FMC Section 8-22003(b)(3)(a) for personal service use. The massage training establishment will require four parking spaces per FMC Section 8-22003(b)(2)(g)(4) for trade and vocational school use. The second floor 7,166 square foot tenant spaces consist mostly of professional and business service uses and requires 24 parking spaces per FMC Section 8-22003(b)(2)(a). The remaining tenant space on the first floor has been leased for retail use and will require 9 parking spaces per FMC Section 8-22003(b)(3)(a). The total number of parking spaces required is 60 parking spaces. There is sufficient parking available for the proposed uses.

**Massage Establishment Ordinance Requirements:** Any massage establishment located within the City of Fremont is required to obtain a valid license from the City's License Authority prior to operation. The City Licensing Authority has received the application for A Perfect Day, LLC. Additionally, the City Licensing Authority required a separate massage

establishment application for Minjian Hand Healing Institute. The application has been received by the City Licensing Authority. The application for the Conditional Use Permit was submitted and processed concurrently for A Perfect Day, LLC and Minjian Hand Healing Institute. However, there will be separate Conditions of Approval (Exhibit "B" & Exhibit "C") for the two businesses.

**Circulation/Access Analysis:** The existing site has good vehicular circulation and access because of its lot configuration. The parcel fronts Paseo Padre Parkway and Capitol Avenue. The applicant is not proposing to make any changes to the site, circulation or parking.

**Design Analysis:** No exterior modifications are proposed as part of this application. Any exterior tenant improvements shall be subject to architectural and site plan review in compliance with the Fremont Municipal Code and policies as well as with various county and state agency regulations (Exhibit "B" & "C", Condition # A-2.) Any signage changes proposed in the future will require permits through the Development Services Center (Exhibit "B" & "C", Condition # A-3.) The site does not currently have a trash enclosure and staff has recommended installation of a new trash enclosure (Exhibit "B" & "C", Condition # A-4.) The existing vegetation in the planter area of the parking lot is bare and staff has recommended infill planting (Exhibit "B" & "C", Condition # A-5.)

**Waste Management:** The California Integrated Waste Management Act of 1989 (AB939) requires that 50% of the waste generated in the City of Fremont be diverted from landfill sites by the year 2000. The project is subject to the City's Source Reduction and Recycling Element (1992), an Integrated Waste Management Ordinance (1995), and a Commercial/Industrial Recycling Plan (1997). These documents require that any new project for which a building permit application is submitted to include adequate, accessible, and convenient areas for collecting and loading trash and recyclable materials. The trash/recycling enclosure for the project will be designed in a manner to be architecturally compatible with nearby structures and with the existing topography and vegetation. (Exhibit "B" & "C", Condition # A-4)

**Development Impact Fees:** This project is not subject to Citywide Development Impact Fees as there is no additional square footage proposed and no change of use category for the purposes of impact fees.

**Public Comments Received:** Staff has received one telephone call from the public opposing massage establishments in the Central Business District.

**Enclosures:** Exhibit "A" Site Plan and Floor Plan  
Exhibit "B" Findings and Conditions of Approval for PLN2003-00316 – A Perfect Day, LLC  
Exhibit "C" Findings and Conditions of Approval for PLN2003-00316 – Minjian Hand Healing Institute  
Exhibit "D" Ordinance No. 2473 (Fremont Municipal Code Title IV, Chapter 7)

**Informational:** Applicant Statement of Proposed Operation for A Perfect Day, LLC, dated August 15, 2003  
Applicant Statement of Proposed Operation for Minjian Hand Healing Institute, dated August 15, 2003

**Exhibits:** Exhibit "A" Site Plan and Floor Plan  
Exhibit "B" Findings and Conditions of Approval for PLN2003-00316 – A Perfect Day, LLC  
Exhibit "C" Findings and Conditions of Approval for PLN2003-00316 – Minjian Hand Healing Institute  
Exhibit "D" Ordinance No. 2473 (Fremont Municipal Code Title IV, Chapter 7)

**Recommended Actions:**

1. Hold public hearing.
2. Find PLN2003-00316 is exempt from CEQA per Section 15301.
3. Find PLN2003-00316 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Fundamental Goals and Land Use Chapters as enumerated within the staff report.
4. Approve PLN2003-00316, as shown on Exhibit "A", subject to Findings and Conditions on Exhibit "B" & Exhibit "C".

**Exhibit "B"**  
**Findings and Conditions of Approval for PLN2003-00316**  
**A Perfect Day, LLC – Conditional Use Permit**  
**39039 Paseo Padre Parkway**

**Findings:**

1. The site is suitable and adequate for the proposed use because there is sufficient on-site parking.
2. The proposed use is consistent with the General Plan because massage establishments contribute to the goal of establishing a diversity of recreational, cultural and employment opportunities.
3. The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services because the site has good access from Capitol Avenue.
4. The proposed use would not have a substantial adverse economic effect on nearby uses because it is not a direct competitor with any of the tenants in the commercial office building.
5. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large because their activities will take place entirely within their leased tenant space.

**General Conditions:**

- A-1. The use shall operate in conformance with Exhibit "A".
- A-2. Any exterior tenant improvements shall be subject to architectural and site plan review in compliance with the Fremont Municipal Code and policies as well as with various county and state agency regulations.
- A-3. *Any signage changes shall comply with the provisions of Fremont Municipal Code Title VIII, Chapter 2, Article 21 Sign Regulations and permits shall be obtained through the Development Services Center.*
- A-4. A new trash enclosure shall be installed in conformance with the Enclosure Construction and Design Guidelines provided by the City of Fremont, Environmental Services Division. The trash/recycling enclosure for the project will be designed in a manner to be architecturally compatible with nearby structures and with the existing topography and vegetation.
- A-5. Landscaping shall be properly maintained and infill vegetation will be provided for the planter area of the parking lot. Dead and dying plants shall be replaced.

**Requirements Before Operation May Commence:**

- B-1. Prior to commencement of the business at this location, the licensee shall obtain, and operate only pursuant to, a Massage Establishment Permit issued by the City's License Authority.
- B-2. Any employee acting as a massage technician shall hold a valid Massage Technician Permit issued by the City's License Authority. This permit must be obtained before the employee begins work as a massage technician.
- B-3. The licensee shall sign a copy of these conditions of approval, with Title IV, Chapter 7 of the Fremont Municipal Code attached as Exhibit "D" hereto, acknowledging he has read and understands the conditions and regulations.

**Ongoing Requirements:**

- C-1. The applicant shall remain in compliance, at all times, with the then current massage ordinance, Title IV, Chapter 7, Massage Establishments, Massage Technicians, and Outcall Massage Technicians of the Fremont Municipal Code. (Exhibit "D" attached hereto.)
- C-2. The applicant shall display the Massage Establishment License and the Massage Technician Permit of each massage technician employed in the establishment in a conspicuous place in the facility in such a manner that it can be easily seen by any persons entering the establishment.
- C-3. Each massage technician shall conspicuously display an identification badge, which shall contain his/her full name, photograph and permit expiration date while rendering such massage service.
- C-4. The massage establishment hours of operation, as stated by the applicant, shall be between the hours of 9:00 A.M. and 10:00 P.M. Any change to operation hours shall be subject to review and approval of the City License Authority, in conformance with the Massage Establishment Ordinance. No massage technician shall administer any massages or other treatments except during approved hours.

**Change of Ownership, Modification and Revocation of Use Permits**

- D-1. In case of transfer of ownership, the new owner of the massage establishment shall sign a Massage Establishment Ownership Transfer Agreement provided by the Zoning Administrator, acknowledging these Conditions of Approval, with Fremont Municipal Code Title IV, Chapter 7 attached as Exhibit "D" hereto. The signed agreement shall be filed with the Planning Division and with the Revenue and Taxation Division (Finance Department.) Failure to comply with this requirement may result in revocation of this approval by the Zoning Administrator or Planning Commission.
- D-2. Minor modifications to the Conditional Use Permit consistent with Title IV, Chapter 7 of the Fremont Municipal Code may be made subject to review and approval of the Development and Environmental Services Director and City License Authority if such modifications are in keeping with the intent of the original approval.
- D-3. If the use for massage establishment ceases for 182 consecutive days, this approval shall be void. Thereafter, a new Planning Commission approval shall be required if the site is to be used again for a massage establishment.
- D-4. If the Development and Environmental Services Director finds evidence that Conditions of Approval have not been fulfilled or that the use or uses has or have resulted in a substantial adverse effect on the health, and/or general welfare of uses of adjacent or proximate property, or have a substantial adverse impact on the public facilities or services, the Director may refer this approval to the Planning Commission for review. If, upon such review, the Commission finds that any of the results stated above have occurred, the Commission may modify or revoke this approval.

**Exhibit "C"**  
**Findings and Conditions of Approval for PLN2003-00316**  
**Minjian Hand Healing Institute – Conditional Use Permit**  
**39039 Paseo Padre Parkway**

**Findings:**

1. The site is suitable and adequate for the proposed use because there is sufficient on-site parking.
2. The proposed use is consistent with the General Plan because massage training establishments contribute to the goal of establishing a diversity of recreational, cultural and employment opportunities.
3. The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services because the site has good access from Capitol Avenue.
4. The proposed use would not have a substantial adverse economic effect on nearby uses because it is not a direct competitor with any of the tenants in the commercial office building.
5. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large because their activities will take place entirely within their leased tenant space.

**General Conditions:**

- A-1. The use shall operate in conformance with Exhibit "A".
- A-2. Any exterior tenant improvements shall be subject to architectural and site plan review in compliance with the Fremont Municipal Code and policies as well as with various county and state agency regulations.
- A-3. Any signage changes shall comply with the provisions of Fremont Municipal Code Title VIII, Chapter 2, Article 21 Sign Regulations and permits shall be obtained through the Development Services Center.
- A-4. A new trash enclosure shall be installed in conformance with the Enclosure Construction and Design Guidelines provided by the City of Fremont, Environmental Services Division. The trash/recycling enclosure for the project will be designed in a manner to be architecturally compatible with nearby structures and with the existing topography and vegetation.
- A-5. Landscaping shall be properly maintained and infill vegetation will be provided for the planter area of the parking lot. Dead and dying plants shall be replaced.

**Requirements Before Operation May Commence:**

- B-1. Prior to commencement of the training use at this location, the licensee shall obtain, and operate only pursuant to, a Massage Establishment Permit issued by the City's License Authority.
- B-2. Prior to commencement of the training use at this location, the licensee is required to obtain a license from the California State Bureau for Private Postsecondary Vocational Education.
- B-3. Any employee acting as a massage instructor shall hold a valid Massage Technician Permit issued by the City's License Authority. This permit must be obtained before the employee begins work as a massage instructor.
- B-4. The licensee shall sign a copy of these conditions of approval, with Title IV, Chapter 7 of the Fremont Municipal Code attached as Exhibit "D" hereto, acknowledging he has read and understands the conditions and regulations.

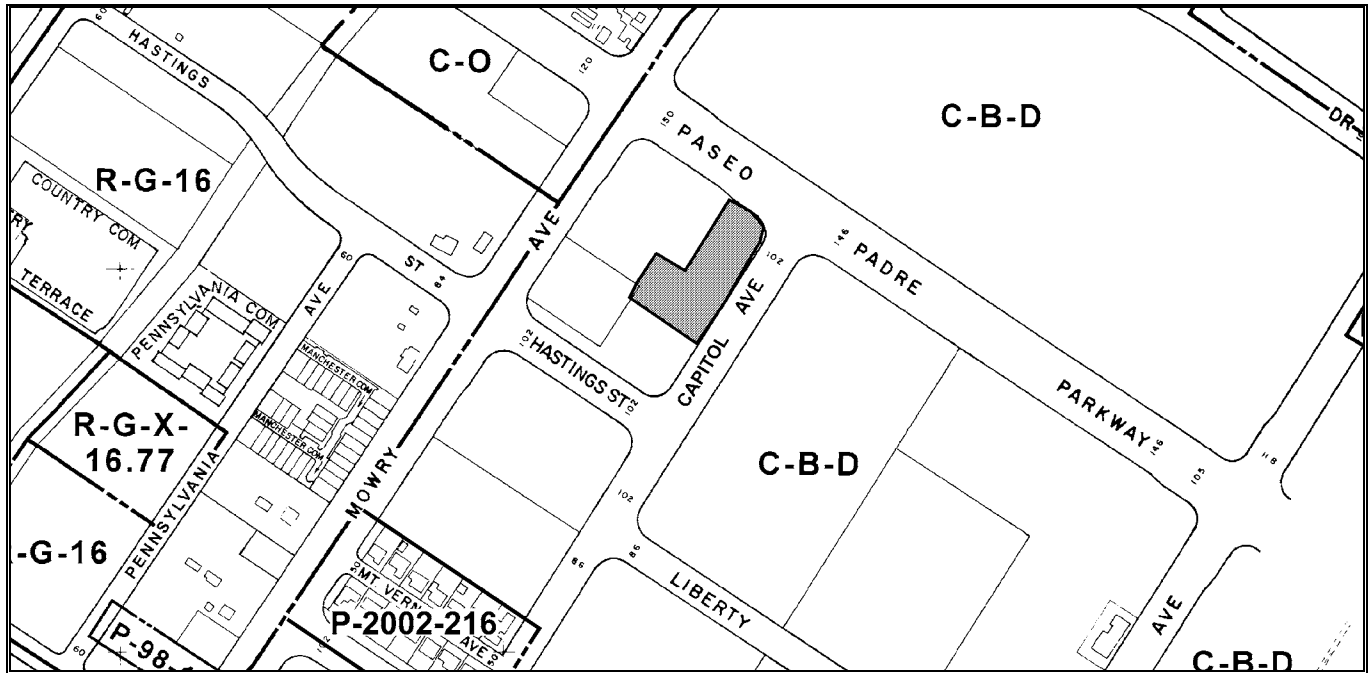
### **Ongoing Requirements:**

- C-1. The applicant shall remain in compliance, at all times, with the then current massage ordinance, Title IV, Chapter 7, Massage Establishments, Massage Technicians, and Outcall Massage Technicians of the Fremont Municipal Code. (Exhibit "D" attached hereto.)
- C-2. The applicant shall display the Massage Establishment License and the Massage Technician Permit of each massage instructor employed in the establishment in a conspicuous place in the facility in such a manner that it can be easily seen by any persons entering the establishment.
- C-3. Each massage instructor shall conspicuously display an identification badge, which shall contain his/her full name, photograph and permit expiration date while conducting massage training.
- C-4. The massage training establishment hours of operation, as stated by the applicant, shall be between the hours of 9:00 A.M. and 9:00 P.M. Any change to operation hours shall be subject to review and approval of the City License Authority, in conformance with the Massage Establishment Ordinance. No massage training shall be scheduled except during approved hours.
- C-5. Students will not be permitted to administer massages to the public at this establishment until all of the requirements have been completed for them to acquire a Massage Technician Permit from the City Licensing Authority.
- C-6. Massage training will only be permitted in the crosshatched area of Exhibit "A" occupied by Minjian Hand Healing Institute. Any revisions to the entrance, floor plan or exterior shall be reviewed by the Development and Environmental Services Director and the City License Authority for approval. The Development and Environmental Services Director reserves the right to refer approval to the Planning Commission.
- C-7. The massage training establishment shall keep a daily register that lists the full names and addresses of all students, the dates and times of the training, type of massage training provided, and the name of the massage instructor or student who performed such training. All information entered in the register shall be kept on file at the premises and made available.

### **Change of Ownership, Modification and Revocation of Use Permits**

- D-1. In case of transfer of ownership, the new owner of the massage training establishment shall sign a Massage Establishment Ownership Transfer Agreement provided by the Zoning Administrator, acknowledging these Conditions of Approval, with Fremont Municipal Code Title IV, Chapter 7 attached as Exhibit "D" hereto. The signed agreement shall be filed with the Planning Division and with the Revenue and Taxation Division (Finance Department.) Failure to comply with this requirement may result in revocation of this approval by the Zoning Administrator or Planning Commission.
- D-2. Minor modifications to the Conditional Use Permit consistent with Title IV, Chapter 7 of the Fremont Municipal Code may be made subject to review and approval of the Development and Environmental Services Director and City License Authority if such modifications are in keeping with the intent of the original approval.
- D-3. If the use for massage training establishment ceases for 182 consecutive days, this approval shall be void. Thereafter, a new Planning Commission approval shall be required if the site is to be used again for a massage establishment.
- D-4. If the Development and Environmental Services Director finds evidence that Conditions of Approval have not been fulfilled or that the use or uses has or have resulted in a substantial adverse effect on the health, and/or general welfare of uses of adjacent or proximate property, or have a substantial adverse impact on the public facilities or services, the Director may refer this approval to the Planning Commission for review. If, upon such review, the Commission finds that any of the results stated above have occurred, the Commission may modify or revoke this approval.

Existing Zoning  
Shaded Area represents the Project Site



Existing General Plan

